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#### REMARKS

The present Response/Amendment is intended to be fully responsive to all points of objection and/or rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of the application is respectfully requested.

Applicant asserts that the present invention is new, non-obvious and useful. Prompt consideration and allowance of the claims is respectfully requested.

#### Status of Claims

Claims 1-40 are pending in the application. Claims 15, 28 and 30 have been objected to. Claims 1-14, 16-27, 29 and 31-40 have been rejected. Claims 1, 5, 6, 7, 8, 20, 21, 36, 37, 38, 39 and 40 have been amended.

Claims 15 and 30 have been canceled without prejudice or disclaimer. In making this cancellation without prejudice, Applicant reserves all rights in these claims to file divisional and/or continuation patent applications.

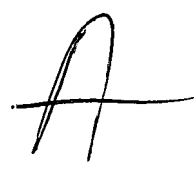
New claims 41 - 66 have been added in order to further define what the Applicant considers to be the invention.

Applicant respectfully asserts that the amendments to the claims, specification and abstract add no new matter.

#### Allowable Subject Matter

In the Office Action, the Examiner stated that claim 15, 28 and 30 would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims. Applicant has cancelled claims 15 and 30. As described below, Applicant's amendment to independent claim 21 from which claim 28 depends makes claim 28 allowable.

#### The Telephone Interview



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Initially, Applicant wishes to thank Examiner Raymond and Supervisor Examiner Hoff, for granting and attending the telephone interview with Applicant's Representatives, Caleb Pollack, Reg. No. 37,912 on November 10, 2003 and Joel Stein, Esq. In the interview, Applicant's representatives discussed with Examiners Raymond and Hoff amendments to the independent claims that would make the claims allowable over the prior art of record. Specifically, Applicant's representatives discussed adding limitations similar to those recited in claim 15, as filed, into the independent claims. Representatives of Applicant discussed further amendments to the independent claims, and the addition of dependent claims, that would be made to further clarify what Applicant regards as his invention but that would not be made for reasons of patentability. After discussing the rejections and these Amendments, the Examiners agreed that the claims including the proposed amendments would be allowable over the prior art rejections of record. Applicant's representatives agreed to submit the amendment in an Amendment.

The prior art of record was not specifically discussed.

#### Voluntary Amendments

Applicant has voluntarily amended claims 5, 6, and 7 to correct grammatical errors therein and clarify what Applicant regards as the invention.

Since these amendments were not made for reasons of patentability and do not narrow the scope of the respective claims, these amendments are not subject to the complete bar against the use of the doctrine of equivalents as outlined in *Festo Corporation v. Shoketsu Kinsoku Kogyo Kabushiki Co. Ltd.*

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#### New Claims

Applicant has added new claims 41-66 to clarify what Applicant regards as the invention. With regard to such new claims 41-66, none of the prior art of record alone in combination teaches the limitation of such new claims. Applicant asserts that such new claims 41-66 are allowable.

#### Remarks to the Title

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Applicant has amended the title of the Application to conform with amendments made to certain independent claims of the invention.

#### Remarks to the Abstract

Applicant has amended the abstract of the Application to conform with amendments made to certain independent claims of the invention.

#### Claim Objections/Allowable Subject Matter

In the Office Action, the Examiner objected to claims 15, 28 and 30 as being dependent on a rejected base claim but noted that such claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant thanks the Examiner for the indication of allowability. Applicant has cancelled claims 15 and 30. Claim 28 depends indirectly from independent claim 21. As described below, Applicant has amended independent claim 21 so that such independent claim, as amended is allowable. Applicant asserts that dependent claim 28 is likewise allowable.

#### CLAIM REJECTIONS

##### 35 U.S.C. § 103 Rejections

In the Office Action, the Examiner rejected claims 1-14, 26-27, 29, and 31-38 under 35 U.S.C. § 103(a), as being unpatentable over Cherry et al., U.S. Patent No. 5,701,894 ("Cherry") in view of Thompson U.S. Patent No. 6,083,248 ("Thompson") and further in view of Bible, U.S. Patent No. 5,226,424 ("Bible"). Applicant respectfully traverses the rejection of claims 1-14, 26-27, 29, and 31-38 as being unpatentable over Cherry in view of Thompson and further in view of Bible.

In the Office Action, the Examiner indicated that the subject matter of dependent claim 15, 28 and 30 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claim. In the interview the Examiners indicated that the subject matter of claim 15 would be acceptable if re-written in independent form without the subject matter of the intervening claims. Applicant's independent claims 1,

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20, 21, 36, 37, 38, 39 and 40, as amended, include inter alia a device or equipment "operative to simultaneously store a first portion of said physiological data in a memory in FIFO fashion and a second portion of said physiological data in said memory that is write-protected with respect to said first portion". Applicant asserts that none of Cherry, Thompson or Bible, alone or in combination teach or suggest, and the Examiner does not assert that any of Cherry, Thompson or Bible teach or suggest control circuitry operative to simultaneously store a first portion of physiological data in a memory in FIFO fashion and a second portion of physiological data in said memory that is write-protected with respect to said first portion, as is required in Applicant's independent claims 1, 20, 21, 36, 37, 38, 39 and 40, as amended. Applicant's independent claim 36, as amended, includes, inter alia, "control means for controlling the monitoring apparatus operative to simultaneously store a first portion of said physiological data in a memory in FIFO fashion and a second portion of said physiological data in said memory that is write-protected with respect to said first portion". Applicant asserts that none of Cherry, Thompson or Bible, alone or in combination teach or suggest, and the Examiner does not assert that any of Cherry, Thompson or Bible teach or suggest, a control means for controlling the monitoring apparatus operative to simultaneously store a first portion of said physiological data in a memory in FIFO fashion and a second portion of said physiological data in said memory that is write-protected with respect to said first portion. Thus, none of Cherry, Thompson or Bible, alone or in combination teach or suggest the invention of independent claims 1, 20, 21, 36, 37, 38, 39 or 40. An obviousness rejection under 35 U.S.C. § 103(a), requires a teaching or a suggestion by the relied upon prior art of all the elements of a claim (M.P.E.P. §2142). Applicant therefore asserts that independent claims 1, 20, 21, 36, 37, 38, 39 or 40 are allowable.

Because each of dependent claims 2-14, 16-19, 22-29, and 31-35 depend directly or indirectly from one of independent claims 1 and 21, and include all of the elements of one of such independent claims, Applicant asserts that such dependent claims are likewise allowable.

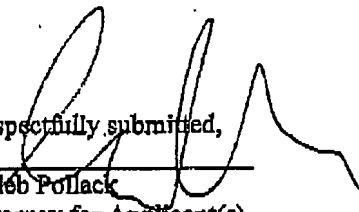
In view of the foregoing amendments and remarks, the pending claims are deemed to be allowable. Their favorable reconsideration and allowance is respectfully requested.

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Should the Examiner have any question or comment as to the form, content or entry of this Amendment, the Examiner is requested to contact the undersigned at the telephone number below. Similarly, if there are any further issues yet to be resolved to advance the prosecution of this application to issue, the Examiner is requested to telephone the undersigned counsel.

As discussed above, Applicant is separately requesting a two month extension of time. Please charge the \$225 due for the 19 new claims 41-66 (\$9 small entity fee \* 25) to deposit account No. 05-0649. No other fees are believed to be due associated with this paper. However, if any such fees are due, please charge any such fees to deposit account No. 05-0649

Respectfully submitted,

  
Caleb Pollack  
Attorney for Applicant(s)  
Registration No. 37,912

Dated: January 14, 2004

Eitan, Pearl, Latzer & Cohen Zedek, LLP.  
10 Rockefeller Plaza, Suite 1001  
New York, New York 10020  
Tel: (212) 632-3480  
Fax: (212) 632-3489

